

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ISREAL GARCIA-BORJA,

Case No. 3:18-cv-00573-RCJ-WGC

Petitioner,

v.

ORDER

ISIDRO BACA, et al.,

Respondents.

This habeas matter is before the Court on Petitioner Isreal Garcia-Borja's Motion for Appointment of Counsel and Evidentiary Hearing and Motion for Leave to File Later Reply (ECF Nos. 28, 30). Respondents have opposed the Motion for Appointment of Counsel and Evidentiary Hearing (ECF No. 29).

Garcia-Borja first asked the Court to appoint counsel upon filing his petition for writ of habeas corpus. (ECF No. 7.) The motion was denied because the petition is sufficiently clear in presenting the issues Garcia-Borja wishes to raise, the issues are not complex, and Garcia-Borja was able to represent himself in the state court after dismissing appointed counsel. (ECF No. 5.)

There is no constitutional right to appointed counsel in a federal habeas corpus proceeding. *Luna v. Kernan*, 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v. Florida*, 549 U.S. 327, 336–37 (2007)). An indigent petitioner may request appointed counsel to pursue habeas relief. 18 U.S.C. § 3006A(a)(2)(B). The court's decision to appoint counsel is generally discretionary. *Id.* § 3006A(a)(2) (authorizing the appointment of counsel "when the interests of justice so require"). However, counsel must be appointed if the complexities of the case are such that denial of counsel would amount to a denial of due process, and where the petitioner is so uneducated that he is incapable of fairly presenting his claims. *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987); *Brown v. United States*, 623 F.2d 54, 61 (9th Cir. 1980). When a habeas petitioner has a good understanding of the issues and the ability to present his contentions forcefully and coherently, no attorney is legally required. *LaMere*, 827 F.2d at 626.

1 Nothing in Garcia-Borja's renewed request for appointed counsel causes the Court to
 2 change its decision that the appointment of counsel is unwarranted, as set forth in the prior order.
 3 The Court appreciates that it is difficult for *pro se* petitioners to pursue their habeas claims and
 4 almost every *pro se* party would benefit from representation by counsel. However, Garcia-Borja
 5 has not shown that denial of counsel would violate due process. Since commencing this habeas
 6 action, Garcia-Borja has submitted multiple filings and motions and demonstrated sufficient ability
 7 to write and articulate his claims. Thus, the appointment of counsel is not justified. Garcia-Borja's
 8 renewed request for the appointment of counsel is denied.

9 Garcia-Borja's motion for an evidentiary hearing will be denied without prejudice because
 10 the Court has yet to examine his remaining habeas claim on the merits. Prior to conducting that
 11 examination, the Court is unable to determine whether an evidentiary hearing is required to
 12 adjudicate the claim. The Court notes that the bulk of Garcia-Borja's motion, including his request
 13 for an evidentiary hearing, actually addresses the arguments set forth in Respondents' Answer
 14 (ECF No. 27) to his Petition for Writ of Habeas Corpus (ECF No. 6), and Garcia-Borja did not file
 15 a reply brief in support of his petition. Accordingly, the Court will reconsider Garcia-Borja's
 16 motion if, following consideration of the merits of his claims, the Court determines that an
 17 evidentiary hearing is necessary. The Court will also construe the arguments set forth in the motion
 18 as Garcia-Borja's reply brief. The pleadings are now closed, and a merits decision will be entered
 19 on Garcia-Borja's habeas claim in due course.

20 **IT IS THEREFORE ORDERED:**

- 21 1. Petitioner Isreal Garcia-Borja's Motion for Appointment of Counsel and Evidentiary
- 22 Hearing (ECF No. 28) is DENIED without prejudice.
- 23 2. Garcia-Borja's Motion for Leave to File Late Pleading (ECF No. 30) is GRANTED.

24 DATED this 23rd day of March, 2021.

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 27 ROBERT C. JONES
 28 UNITED STATES DISTRICT JUDGE